

BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

RECEIVED**JUN - 9 1993**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM DOCKET NO. <u>93-107</u>
DAVID A. RINGER)	File No. BPH-91123OMA
ASF BROADCASTING CORPORATION)	File No. BPH-91123OMB
WILBURN INDUSTRIES, INC.)	File No. BPH-91123OMC
SHELLEE F. DAVIS)	File No. BPH-911231MA
WESTERVILLE BROADCASTING COMPANY LIMITED PARTNERSHIP)	File No. BPH-911231MB
OHIO RADIO ASSOCIATES, INC.)	File No. BPH-911231MC
For Construction Permit)	
For New FM at Westerville, Ohio)	

To: Administrative Law Judge Walter C. Miller

OPPOSITION TO MOTION TO ENLARGE ISSUES

Westerville Broadcasting Company Limited Partnership ("WBC") herein opposes the "Motion to Enlarge Issues Against WBC" which Ohio Radio Associates, Inc. ("ORA") filed May 25, 1993. In opposition, the following is stated:

BACKGROUND

ORA seeks the specification of financial and misrepresentation issues against WBC. WBC reported in its application it had \$300,000 available from Spurgeon Webber, Jr., the father of Spurgeon Webber, III and Deidra W. Humphrey, WBC's limited partners. WBC also estimated its construction and first three months operating costs to be \$300,000. See Exhibit A hereto.

No. of Copies rec'd
List A B C D E

016

In response to Section 1.325(c)(1)(xii) of the Rules, WBC produced in discovery a document dated December 20, 1991 entitled "Construction Summary."^{1/}

On the basis of that document alone, ORA asserts that WBC must be disqualified because its cost estimates supposedly are for equipment and construction only and do not include the first three months operating costs.

Of course, ORA fails to note that the Construction Summary includes, as Item 10, \$39,000 for miscellaneous, spares and contingency expenses. WBC general partner Freeman Edwards, II, who has extensive experience in planning, budgeting construction costs and installing communications facilities in his position as a Network Planning Engineer with AT&T, and who previously has estimated construction and operating expenses of FM broadcast stations, included the expense of the station's first three months of operation in this miscellaneous category and concludes the estimate is more than adequate. Mr. Edwards also notes that his budget includes overages of \$49,700 that also will be available to cover unanticipated operational expenses. See Exhibit C hereto (Declaration of Freeman Edwards, II).

^{1/} For the convenience of the Presiding Judge, a copy of the document is attached hereto as Exhibit B. It was also included as Attachment 2 of ORA's Motion to Enlarge Issues.

ARGUMENT

ORA is engaging in pointless flyspecking. WBC's overall estimate of \$300,000 to construct and operate the proposed station for three months is clearly sufficient. as ORA's application itself

presented a total estimated cost that is higher than any other applicant in the proceeding.

ORA next cites Dean F. Aubol, 6 FCC Rcd 4117 (¶3) (Chief, Audio Services Division, 1991). There, an applicant stated her construction and first quarter operating costs would be \$140,775, but indicated only \$110,000 was available to her. Here, WBC has estimated total construction and operating costs of \$300,000 and has \$300,000 available to meet those costs. See Exhibit A hereto.

The third case ORA cites, Victorson Group, Inc., 6 FCC Rcd 1697, 1700 (¶19) (Rev. Bd. 1991), involved an applicant that had prepared no cost estimates whatsoever. Indeed applicant's principal eluded only to a "general sense" of construction costs accompanied by some "scribblings." That principal's hearing testimony was nebulous as to the applicant's estimated costs or concrete steps taken before certifying the applicant as financially qualified. Here, WBC's Freeman Edwards did not rely on a "general sense" of construction costs. Rather he prepared the Construction Summary and included therein as Category 10 a figure sufficient to cover first quarter operating costs. Moreover, he intentionally overestimated other cost categories to ensure that sufficient funds were available to meet unanticipated operational expenses.

While the Commission's instructions to FCC Form 301 (included as Attachment 3 of ORA's Motion) sets forth in substantial detail the items to be considered in an applicant's construction estimates, with respect to operating costs, the instructions state only that the applicant's estimate "must also include the cost of

operating the proposed facility for the first three months, including the cost of proposed programming, without relying on advertising or other revenues to meet operating costs." In other words, even the Commission's application form does not compel an applicant to prepare a line-item operating budget.

Where an applicant such as WBC includes in its overall estimate sufficient funds to meet reasonable estimated operating expenses, no basis exists for specification of an issue simply because the those operating estimates are not presented in a format to the petitioner's liking. E.g., Georgia Public Telecommunications Commission, 7 FCC Rcd 2942, 2948 (¶33) (Rev. Bd. 1992) (where applicant had made mental notes and was otherwise familiar with construction and operating costs, no issue warranted where applicant relied on what was ultimately a "bottom line" estimate); Armando Garcia, 3 FCC Rcd 1065, 1066 (¶8) (Rev. Bd. 1988), review denied, 3 FCC Rcd 4767 (1988), ("bottom line" estimate accepted where applicant was familiar with financial requirements necessary to construct and operate such a facility).

Here, WBC's Freeman Edwards not only has extensive experience in facilities planning generally, but is familiar with the costs of constructing and operating an FM station specifically. Moreover, his cost estimate of \$300,000 is neither inherently unreasonable nor out of line with those of other applicants in this proceeding. Under the circumstances, no financial issue is warranted.


Furthermore, there is not the slightest indication of an intent to deceive on the part of Mr. Edwards or WBC. In light of

the fact ORA's cost estimates are \$50,000 lower than WBC's, ORA's request for specification of a misrepresentation issue is both meritless and disingenuous.

WHEREFORE, in light of all circumstances present, ORA's "Motion to Enlarge Issues against WBC" should be DENIED.

WESTERVILLE BROADCASTING COMPANY
LIMITED PARTNERSHIP

By:


Dennis F. Begley

By:


Matthew H. McCormick

Its Counsel

Reddy, Begley & Martin
1001 22nd Street, N.W.
Suite 350
Washington, D.C. 20037

June 9, 1993

Exhibit A

Financial Qualifications Section of WBC Application

SECTION III - FINANCIAL QUALIFICATIONS

NOTE: If this application is for a change in an operating facility do not fill out this section.

1. The applicant certifies that sufficient net liquid assets are on hand or that sufficient funds are available from committed sources to construct and operate the requested facilities for three months without revenue.

☒ Yes ☐ No

2. State the total funds you estimate are necessary to construct and operate the requested facility for three months without revenue.

\$ 300,000.00

3. Identify each source of funds, including the name, address, and telephone number of the source (and a contact person if the source is an entity), the relationship (if any) of the source to the applicant, and the amount of funds to be supplied by each source.

Source of Funds (Name and Address)	Telephone Number	Relationship	Amount
Spurgeon W. Webber, Jr.	(704) 394-3072	Father of Spurgeon W. Webber, III and Deidra W. Humphrey	\$300,000.00

Exhibit B

WBC Construction Summary

WESTERVILLE BROADCASTING COMPANY, LTD
5412 Flintrock Court
Westerville, Ohio 43081
(614) 891-1669

Westerville, Ohio (Chanel 103.9 FM)
Construction Summary

1. Real Estate.....	\$ 40,000
2. Electrical service, transmitter and studio.....	10,500
3. Modifications to leased studio building.....	15,000
4. Equipment installation and testing.....	20,000
5. Office equipment.....	14,500
6. Transmitter plant.....	51,000
7. Three hundred ft. guyed tower w/lighting.....	30,000
8. Transmitter building.....	25,000
9. Studio equipment (stereo consoles, etc.).....	48,000
10. Miscellaneous, spares and contingency.....	39,000
GRAND TOTAL.....	\$293,000



Freeman Edwards II

12/20/91

Exhibit C

Declaration of Freeman Edwards, II

06/09/93

09:51

05/2:/::

6::2:

002

06/09/93 09:04

REDDY BEGLEY MARTIN → 17039793556

NO.994 P002

DECLARATION OF FREEMAN EDWARDS. II

06/09/93

09:51

05/27/93

6:22

003

06/09/93 09:05 RFDY BEGLEY MARTIN - 17039793556

NO. 994 P003

- 2 -

5. Moreover, to ensure that the station would have adequate funds, I intentionally kept my construction estimates high. For example, my estimates include the following overages:

A. Real Estate. Real estate is estimated at \$40,000. However, the lease for WBC's transmitter site is estimated at \$1,200 per month and I expect to be able to lease a studio facility for \$2,000 per month. I expect to be able to lease a studio facility for \$2,000 per month.

06/09/93

09:51

05/2:/::

6::2:

004

06/09/93 04:05

REDDY BEBLEY MARTIN → 17039793550

NO.994 P004

E. Studio Equipment. I have estimated \$48,000 for a studio based upon the Harris-Allied proposal for a two-studio operation. However, since we will initially only use one studio, \$40,000 is a more realistic estimate. This leaves an \$8,000 excess.

Accordingly, I anticipated that through these construction cost savings, another \$49,700 will be available to cover any unanticipated operational expenses.

Executed this 8th day of June, 1993.


FREEMAN EDWARDS, II

Exhibit D

ORA Cost Estimates

OHIO RADIO ASSOCIATES, INC.

ESTIMATE OF COSTS FOR APPLICATION, HEARING, CONSTRUCTION AND FIRST THREE MONTHS
OPERATING COSTS

211

Tower and Antenna System (Approx. 96 meter tower, guyed, lighting, antenna system,
and all associated equipment including delivery and installation)

Transmitter and associated equipment monitors

Studio Equipment Package

Sub-Total: \$100,000*

* Total cash price quote from S.C.M.S., Inc.

Studio to Transmitter Link	\$8,450	
Two Auxiliary Generators	\$9,000	
Sub-Total:		\$17,450

Site Preparation Costs	\$2,000	
Tower Site Lease(\$1,250/month x 3)	\$3,750	
Studio Building Lease (\$500/month x 3)	\$1,500	
Studio Office Furniture (used)	\$ 500	
Utilities(elec., tele., heat, etc.) (\$1000/month)	\$3,000	
Insurance (\$200/ month x 3)	\$ 600	
Programming		
Music Library	\$5,000	
News Service(\$500/month x 3)	\$1,500	
BMI, ASCAP, and misc.	\$3,000	
Sub-Total		\$20,850

Salaries(including withholding, deductions, etc.)		
General Manager(\$2,500/month x 3)	\$7,500	
Program/News Director(\$2,000/month x 3)	\$6,000	
Traffic Manager/Bookkeeper (\$1,500/month x 3)	\$4,500	
2 Announcers (\$1,000/month x 3 x 2)	\$6,000	
2 Sales Persons(\$500/month adv vs. com. x3x2)	\$3,000	
Secretary/Receptionist (\$700/month x 3)	\$1,500	
Contract Engineer(part-time)(\$500/month x 3)	\$1,500	
Sub-Total:		\$30,600

Estimate of Legal Fees and Hearing Expenses		
Legal Fees(Any amount exceeding will be deferred until 4 months after Program Test Authority)	\$20,000	
Fcc Hearing Fee	\$6,760	
Sub-Total:		\$26,760

TOTAL:		\$195,660
Reserve for contingency		\$ 54,340
Total cash committed		<u>\$250,000</u>

CERTIFICATE OF SERVICE

I, Marilyn Phillips, hereby certify that on this 9th day of June, 1993, copies of the foregoing **Opposition to Motion to Enlarge Issues** were hand delivered or mailed, first class, postage prepaid, to the following:

Administrative Law Judge Walter C. Miller *
Federal Communications Commission
2000 L Street, N.W., Room 213
Washington, D.C. 20554

James Shook, Esquire *
Hearing Branch
Federal Communications Commission
2025 M Street, N.W., Room 7212
Washington, D.C. 20554

Arthur V. Belendiuk, Esquire
Smithwick & Belendiuk, P.C.
1990 M Street, N.W.
Suite 510
Washington, D.C. 20036
Counsel for David A. Ringer

James A. Koerner, Esquire
Baraff, Koerner, Olender & Hochberg, P.C.
5335 Wisconsin Avenue, N.W., Suite 300
Washington, D.C. 20015-2003
Counsel for ASF Broadcasting Corp.

Stephen T. Yelverton, Esquire
McNair & Sanford, P.A.
1155 15th Street, N.W.
Suite 400
Washington, D.C. 20005
Counsel for Ohio Radio Associates, Inc.

Eric S. Kravetz, Esquire
Brown, Nietert & Kaufman
1920 N Street, N.W., Suite 600
Washington, D.C. 20036

Dan J. Alpert, Esquire
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036
Counsel for Shellee F. Davis


Marilyn Phillips

*Hand Delivered
